



NEW AMERICA
FOUNDATION

January 23, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of Oral *Ex Parte* Presentation
IB Docket No. 11-149 (DISH/Terrestrial License Transfer and Waiver for ATC)
IB Docket No. 11-150 (DISH/DBS License Transfer and Waiver for ATC)
WT Docket No. 12-4 (Verizon/SpectrumCo Joint Venture and License Transfer)
IB Docket 11-109 (LightSquared Waiver for ATC)
WT Docket No. 10-4 (Signal Booster Rules to Improve Wireless Coverage)

Dear Ms. Dortch:

On January 19, 2012, Michael Calabrese of the New America Foundation, Harold Feld of Public Knowledge, Parul Desai of Consumers Union, and Matt Wood of Free Press met as representatives of the Public Interest Spectrum Coalition (PISC) with Rick Kaplan, James Schlichting and Melissa Tye of the Wireless Telecommunications Bureau. The PISC representatives addressed a number of different proceedings, as referenced above.

With respect to the applications filed by Verizon Wireless requesting the Commission's approval to transfer various AWS-1 spectrum licenses from SpectrumCo, LLC ("SpectrumCo") and from Cox TMI Wireless, LLC3 ("Cox"), the PISC representatives expressed their view that the related commercial agreements, under which the four cable companies and Verizon Wireless will resell each other's wireless and cable services, respectively, are integrally related to a public interest analysis of the license transfers. The PISC representatives noted that the Verizon/SpectrumCo and Verizon/Cox commercial agreements filed under Protective Orders on January 18 are likely to bear directly on the public interest determination on the license transfers. PISC representatives also encouraged the Bureau to use this proceeding to give additional consideration to the nature and future role of a spectrum screen or cap.

Regarding the applications for license transfer and associated waivers of the MSS/ATC integrated service rules requested by DISH Network Corp. (“DISH”), the PISC representatives expressed their general agreement with DISH that in this instance a waiver could be the most appropriate procedural route and best serve the public interest in securing more robust competition in the rapidly consolidating market for mobile broadband services. The PISC representatives stated that the public interest would not be served by the long delay and uncertainty that would result if the DISH request for a limited waiver of the integrated service rules is decided in the context of a general rulemaking on the MSS bands and/or a new comprehensive 2 GHz band plan.

Neither should the Commission delay in anticipation of a Congressional grant of incentive auction authority. The PISC representatives stated that although the requested waivers would enhance the value of the 40 MHz of MSS spectrum acquired by DISH by billions of dollars, the Commission should follow the precedent it set in response to essentially the same request for MSS license transfers and a limited waiver of the integrated service rules granted to LightSquared Subsidiary LLC (“LightSquared”) in 2009 and 2010, respectively. LightSquared compensated the public for the grant of valuable spectrum rights by agreeing to a series of compelling public interest obligations that included deployment of a wholesale-only LTE network, rapid buildout requirements, and a requirement to seek Commission approval for any sale or leasing of more than 25 percent of the network’s capacity in an economic market area to one of the two largest terrestrial carriers by market share. In multiple filings, several of the same PISC groups attending this meeting have stated that these obligations are appropriate and seem likely to promote competition, innovation, consumer choice and rural coverage.¹

The PISC representatives noted that although the National Broadband Plan recommended use of an incentive auction to recapture value for the public in exchange for enhanced spectrum rights in the S Band, in the alternative obligations comparable to those that apply to LightSquared could yield greater public benefits in the longer term. The PISC representatives mentioned prior Commission approval for any capacity lease or secondary market transaction involving one of the two largest terrestrial carriers, a wholesale access obligation for a portion of the DISH S Band network capacity (up to 50 percent), and a more rapid and rural-focused buildout requirement as obligations that could justify the granting of a multi-billion dollar waiver of the integrated service rules.

¹ See Comments of Free Press, Media Access Project, New America Foundation and Public Knowledge, *In the Matter of LightSquared LLC Request for Modification of its Authority for an Ancillary Terrestrial Component*, Order and Authorization, SAT-MOD-20101118-00239 (Dec. 9, 2010); Public Interest Organizations, Consolidated Opposition to Applications for Review and Petition for Reconsideration, *In the Matter of LightSquared LLC Request for Modification of its Authority for an Ancillary Terrestrial Component*, SAT-MOD-20101118-00239 (Mar. 14, 2011), at 7.

The PISC representatives also suggested that any buildout requirements should be augmented by a “use it or share it” license condition that would permit other parties to make use of unused DISH spectrum in the S Band on a very localized basis until such time as DISH actually deploys service. Responding to the Commission’s Notice of Inquiry on Dynamic Spectrum Use Technologies, PISC has previously proposed this as an alternative to more draconian and largely unenforceable “use it or lose it” buildout requirements.² While temporary local use of fallow spectrum may not have been practical as recently as last year, the Commission’s ongoing certification of geolocation databases to govern opportunistic and conditional access by frequency-hopping radios to vacant TV channels makes this entirely feasible. There appears to be no reason to limit use of the TV Bands Databases to the TV band alone, as such databases likewise could be used to regulate contingent access to fallow portions of other bands including the S Band.

Although the 20 MHz band that DISH is acquiring from Terrestar may not be compatible with opportunistic access by other users due to the ongoing mobile use of Terrestar Genus satellite phones, the 20 MHz being acquired from DBSD is apparently fallow spectrum – much of which will remain so for many years until such time as DISH completes a nationwide buildout. Just as licensed wireless microphone operators can make reservations in the database to block unlicensed access to TV white space channels as they need it, the integrated service waiver granted to DISH could require, as part of a buildout obligation, that DISH notify one or more FCC-certified TV Bands Database managers in advance of the commercial operation of a base station or other transmitter on the S Band, along with the protection contour that is needed to give the licensee its needed and expected protection from harmful interference. Any unlicensed or other FCC-approved access to unused S Band spectrum in a local area would be subject to these conditions, including the presumption that use of fallow MSS spectrum is contingent and temporary.

As the Commission adds fallow or underutilized bands to the database, subject to band-by-band conditions designed to avoid interference with incumbent licensees, networks and devices can check the database for a particular area and select the most useful frequency from among those to which they can be tuned. Although device costs might be higher, the low spectrum costs would presumably be an offset. That trade-off between the ability to use unlicensed spectrum with somewhat more expensive equipment and/or a potentially lower quality of service is what has allowed thousands of WISPs and community wireless providers to serve rural and other underserved areas. Another emerging development that supports both the usefulness of a “stockpile” of unused spectrum and its benefit for consumers and competition is the possibility that multiple carriers – as well as other services needing wireless connectivity –

² See Comments of the Public Interest Spectrum Coalition, In the Matter of Promoting More Efficient Use of Spectrum Through Dynamic Spectrum Use Technologies, ET Docket No. 10-237 (Feb. 28, 2011). See also Michael Calabrese, “Use it or Share it: Unlocking the Vast Wasteland of Fallow Spectrum,” Working Paper, presented at 39th Research Conference on Communication, Information and Internet Policy, September 25, 2011.

could share a common network infrastructure. In addition, like unlicensed access to TV white space, many uses will be very low power and local area connections for peer-to-peer applications, or for connections to a wireline router for the purpose of achieving faster data rates and offload, thereby avoiding the need to send certain bandwidth intensive data applications (such as video) over a capacity-limited licensed network.

The PISC representatives also inquired about the status of the ongoing testing and resolution of the GPS interference concerns that have delayed final approval of the planned nationwide LTE deployment on L Band mobile satellite spectrum acquired by LightSquared. The PISC representatives reiterated their view that the deployment of a wholesale-only LTE network and other public interest conditions associated with the LightSquared license transfer and waiver are compelling with respect to their potential impact on wireless market competition, innovation, consumer choice and rural deployment. The PISC representatives noted that a subset of PISC groups that have filed pleadings believe it is incumbent upon the Commission to actively intervene to broker or, if necessary, impose a plan that will not leave the L Band fallow, that will permit LightSquared to deploy its promised wholesale-only mobile broadband network, and that will safeguard essential GPS services, while calling on both parties to share the costs of a long-term transition.³

With respect to the Signal Booster proceeding referenced above, the PISC representatives inquired on the status and timing of a Commission order. The New America Foundation and Public Knowledge filed comments last July 25 which conveyed the view that the licensing-by-rule approach proposed in the Commission's NPRM, under section 307(e), is the most practical approach that would also ensure the greatest benefit for consumers by promoting competition and innovation in both the market for signal booster peripherals and among ISPs, since smaller, regional and rural carriers would be disadvantaged by a booster market controlled in any way by the dominant carrier duopoly.

Respectfully submitted,

/s/

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³ See Comments of the Public Interest Organizations Regarding the LightSquared Technical Working Group Report, IB Docket No. 11-109, SAT-MOD-20101118-00239 (Aug. 1, 2011).